NO. 92-1183

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STEPHEN A. KNOX, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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BRIEF OF NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES, THE NATIONAL PARENT TEACHER ASSOCIATION, NATIONAL COALITION AGAINST PORNOGRAPHY, "ENOUGH IS ENOUGH!", NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, NATIONAL CHILDREN'S ADVOCACY CENTER, CHILD WELFARE LEAGUE OF AMERICA, AMERICAN COALITION FOR ABUSE AWARENESS, FOCUS ON THE FAMILY, FAMILY VIOLENCE & SEXUAL ASSAULT INSTITUTE, FAMILY RESEARCH COUNCIL, INC., MOVING FORWARD, INC., NATIONAL CENTER FOR REDRESS OF INCEST AND SEXUAL ABUSE, HELP US REGAIN THE CHILDREN, VOICES IN ACTION, INC., AS *AMICI CURIAE* IN SUPPORT OF THE RESPONDENT.

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INTEREST OF THE AMICI CURIAE*

Amici comprise a broad collection of public interest groups whose membership include the survivors of childhood sexual abuse and professionals who expend considerable energy advocating legal and social reforms to protect children. Amici, while representing diverse political perspectives, agree that this Court's decisions in the present case will directly impact the safety and well-being of children. For the Court's convenience, Appendix B contains a full description of the Amici.

SUMMARY OF THE ARGUMENT

The existence of child sexual abuse is a tragic commentary on the status of children in contemporary American society. Children who have been sexually abused are often maladjusted and frequently suffer from a myriad of harmful after-effects. Accordingly, this Court and numerous other courts have identified the protection of children from child sexual abuse as a particularly compelling interest. *New York v. Ferber*, 458 U.S. 747, 756 (1982). Furthermore, this Court has recognized that child sexual abuse includes acts of sexual exploitation such as displaying a child for the sexual gratification of adults.

It is obvious that the material at issue in the present case display children for the sexual gratification of pedophile consumers (i.e., persons, such as the Petitioner, who are afflicted with a sexual pathology characterized by a sexual attraction to children.) Indeed, the "Nather Notes", which are the Nather company's promotional materials, make clear that the Nather Tapes are intended to arouse the viewer's sexual

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* This brief is submitted with the written consent of both parties, filed with the clerk of this Court.

passions. Because most of the children depicted in the Nather Tapes are apparently unaware of the use to which their images are put, the production as well as the repeated viewing of these videotapes constitute child sexual abuse.

Pedophiles harm children by utilizing sexually suggestive depictions such as the Nather Tapes as an aid in the commission of sex crimes. First, pedophiles use such images to stimulate their sexual desires. Scholarly research has documented a direct link between pedophilic sexual stimulation via images of children and child sexual abuse. Second, as this Court has recognized, pedophiles use these sexually suggestive images to lower the inhibitions of other children in order to lure them into sexual relationships. To borrow a phrase from the Petitioner, "it is beyond obvious" that sexual relations between children and adults constitute child sexual abuse. The Nather Tapes, and other similar tapes, provide erotic inspiration to the child sexual abuser and facilitate the transformation of pedophilic fantasy into child sexual abuse.

In the context of the first amendment, this Court's decisions reflect a careful and studied analysis of the practical consequences of a particular course of action. Accordingly, in any analysis of the legal and equitable issues in the instant case, this Court must consider the likely response of pedophiles and those who pander to them.

In the instant case, Petitioner asks this Court to shackle the government's efforts to protect children from filmed or photographed sexual abuse if the children are clothed or partially clothed while being abused. Clearly, however, child sexual abuse is as pernicious whether the child is clothed, partially clothed, or nude.

Petitioner's argument also ignores the function of the Nather Tapes as effective tools in the seduction of children. Amici submit that so impeding the government's ability to enforce 18 U.S.C. § 2256 will provide pedophiles with a "backdoor" opportunity to seduce and abuse children. This "backdoor" opportunity will spawn a "backdoor child pornography" industry that will seek out and victimize children.

Petitioner urges this Court to adopt a counterintuitive definition of the term "exhibit." Brief for Pet. at 15. However, established canons of statutory construction require this Court to define "exhibit" in common sense terms. Accordingly, this Court should reject any definition of exhibit which presupposes nudity. Such a definition offers pedophiles too many opportunities to abuse children.

Since this Court decided *Ferber*, child pornography has been driven underground and has not been widely commercially available. If Petitioner's conviction is overturned, there is every reason to believe that sexually suggestive depictions of children will become more widely available in such venues as cable television, neighborhood convenience stores, and video rental stores. Furthermore, new video producers will enter the "backdoor child pornography" market. This increased competition will fuel greater demand for sexually suggestive depictions of children, including traditional forms of child pornography.

The new, more competitive market for "backdoor child pornography" will require additional child models who will be aggressively pursued by "backdoor child pornography" producers. These new models will unquestionably be displayed for the sexual gratification of pedophiles such as Petitioner, which is itself a form of child sexual abuse. Research data indicate that viewing the sexually suggestive

images available in the "backdoor child pornography" market will encourage pedophiles to molest children.

Finally, in order to increase their share of the market, "backdoor child pornography" producers will present ever more graphic and explicit images of children in their videotapes. None of the consequences of overturning Petitioner's conviction bode well for children.

Today, a cold wind threatens to rush through America and spread further a malaise called pedophilia. This Court has an historic opportunity to stand between that wind and America's children. In a society where children fall prey to sexual predators, the state must be allowed to prevent the sexual victimization of children. If this Court overturns Petitioner's conviction, it will unleash Nather and like-minded companies to prey upon the children of an unsuspecting public.

The first amendment should not be a portal through which America's children are lured into degradation and humiliation.

ARGUMENT

I. EVIDENCE CLEARLY REVEALS THAT CHILD PORNOGRAPHY DIRECTLY CONTRIBUTES TO CHILD SEXUAL ABUSE.

A. Child Sexual Abuse Occurs When a Child Is Used or Displayed for the Sexual Gratification of an Adult.

Child sexual abuse has been defined as "[c]ontacts or interactions between a child and an adult when the child is being used for the sexual stimulation of that adult or another

person."[1] At least one researcher explicitly distinguishes between "contact" forms of child sexual abuse, such as actual intercourse with a child, and "non-contact" forms of child sexual abuse, such as exhibitionism or voyeurism.[2]

This Court, and several circuit courts of appeal, have accepted an expansive definition of child sexual abuse and observed that child sexual abuse may occur without contact between the child and the offender, such as in the case of child pornography.[3] *Osborne v. Ohio*, 495 U.S. 103, 110 (1990) (state has an important interest in protecting the "victims of child pornography"); *Ferber*, 458 U.S. at 774-75 (1982) (O'Connor, J., concurring); *see United States v. Andersson*, 803 F.2d 903, 907 n.3 (7th Cir. 1986), *cert. denied*, 479 U.S. 1069 (1987) (labeling child pornography as a form of sexual abuse). In *United States v. Arvin*, the Court observed that §§ 2252 and 2256 "[r]eflect a legislative determination that *it is a form of child abuse for a photographer to pose a child sexually for purposes of the photographer's sexual gratification*, and that the abuse continues with the dissemination of the photos for purpose of satisfying others." 900 F.2d 1385, 1389 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 594 (1991) (emphasis added).

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[1] R. Kempe and C. Kempe, The Common Secret: Sexual Abuse of Children and Adolescents 10 (1984); *see* B. Coulfield & R. Horowitz, Child Abuse and the Law 1 (1987)(noting that child sexual abuse "may encompass a broad range of activity, including rape, sexual contact, intentional touching, and intentional exposure. It also includes sexual exploitation, such as forcing or soliciting a child to engage in prostitution or pornographic enterprises.")

[2] *See*, David Finkelhor, *Answers to Important Questions About the Scope and Nature of Child Sexual Abuse*, (to be published in *The Future of Children*)(on file with the National Law Center for Children and Families).

[3] Material is thus classified as pornographic only if it is intended to elicit sexual responses. Webster's New World Dictionary 1051 (3d ed. 1991).

B. Visual Depictions of Children Containing Lascivious Exhibitions of the Genitalia or Pubic Area Elicit a Pedophilic Response and Are Directly Linked to Child Sexual Abuse.

i. Child Sexual Abuse is a Social Problem of Major Proportions Involving the Exploitation of Thousands of Children Annually.

It is indisputable that child sexual abuse is an intractable social problem reaching epidemic proportions in the United States.[4] *See* H.R. Rep. No. 910, 99th Cong., 2d Sess. 3, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5952, 5953 ("there may be as many as one half-million children and adolescents who are victims of sexual abuse annually")(statement of Senator William Roth). From 1980 to 1986, child sexual abuse increased three fold.[5] However, estimates of actual child sexual abuse greatly exceed 138,000.[6] Furthermore, it has been estimated that "one in three females and one in ten males will be sexually molested before the age of 18; and four million child molesters [are believed to] reside in this country."[7]

ii. Child Pornography Contributes to Child Sexual Abuse Because Pedophiles Use it To

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[4] *See, e.g.*, Eugene Register-Guard, Oct. 31, 1988, at B1, col. 1 (Oregon's Children's Services Division *confirmed* approximately 12,000 cases of child sexual abuse from 1985-1987).

[5] *See* National Center of Child Abuse and Neglect, Children's Bureau, U.S. Department of Health and Human Services, *Study of National Incidence and Prevalence of Child Abuse and Neglect* (1988).

[6] National statistics showed an increase of 400 percent in child sex abuse reports from 1977-1982. In 1984 alone there were 123,000 reported cases, a 35% increase over 1983. Martin Mawyer, *Silent Shame* 27 (1987).

[7] U.S. Department of Justice, Network News 7 (Fall 1985).

Stimulate Their Sexual Desires, Seduce Children, and Record Child Sexual Abuse.

In order to comprehend fully the likely harmful effects of overturning Petitioner's conviction, this Court should consider the reality of child sexual abuse and its relation to sexually explicit depictions of children. Many have commented that "child pornography is the worst form of child abuse."[8] Thousands upon thousands of America's children have been subjected to the indignity of sexual abuse through pornography. The media of video, photography, and film are fora that have depicted our children engaging in various acts from subtle nudity to blatant sexual participation.

The Court must understand the mind and proclivities of pedophiles. As some scholars have observed, "Once we begin to understand the nature of a pedophile's sexual pathology, a certain logic does emerge regarding their behavior."[9] The Nather Tapes are pornographic to pedophiles because of the ages of the models and the camera's focus on their genitalia. Those who would view the videotapes at issue are sexually aroused by children and derive great satisfaction in fantasizing about sexual liaisons with them.

Social science and law enforcement studies have demonstrated that the child sexual abuser is the pedophile who transmutes these fantasies into reality. A study conducted in Louisville, Kentucky of 1400 child sexual abuse cases clearly demonstrated that a significant number of child sexual abuse cases involve the use of sexually explicit depictions of children. *See The Effects of Pornography on Women and Children: Hearings Before the Subcomm. of*

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[8] William A. Stanmeyer, *The Seduction of Society* 88 (1984)

[9] Daniel S. Campagna and Donald L. Poffenberger, *The Sexual Trafficking in Children* 23 (1988)

Juvenile Justice of the Comm. on the Judiciary of the United States Senate, 98th Cong. 2d Sess. 136-139 (Sept. 12, 1984)(testimony of John Rabun, for the National Center for Missing and Exploited Children)(Committee Serial No. J-98-133). In this study, over 40 major cases, involving 12 or more child victims, were examined in depth. *Id.* **All** 40 cases involved various forms of pornography and in most cases, child nudes and/or child pornography were found in the abuser's home. *Id.*

Law enforcement studies have verified that pedophiles invariably collect visual depictions of children that arouse a pedophilic interest in sex.[10] Detective William Dworin of the Los Angeles Police Department testified before Congress that of the 700 child molesters in whose arrest he had participated, more than half had child pornography in their possession.[11] *See* Perm. Subcomm. on Invest., Child Pornography, and Pedophilia, S. Rep. No. 537, 99th Cong. 2d Sess. 9 (1986) [hereinafter "S. Rep. No. 537"]; *see generally* Donnelly, *Protection of Children from Use in Pornography*, 12 J. Law Reform 295 (1979)(comprehensive discussion of the correlation between child pornography and child sexual abuse).

Other studies have demonstrated that repeated exposure to sexually explicit material involving children is directly linked to child sexual abuse.[12] *See* S. Rep. No. 537 at 8 n.27

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[10] K. Lanning, *Child Molesters: A Behavioral Analysis* 17-25 (2d ed. 1987).

[11] *See* Ralph W. Bennett, *The Relationship between Pornography and Extrafamilial Child Sexual Abuse*, The Police Chief (February 1991) 19.

[12] *See, e.g.*, Erickson, *Behavior Patterns of Child Molesters*, 17 Archives Sexual Behav. 77-78 (Feb. 1988)(reporting that large numbers of child molesters use sexually suggestive pictures of children to lower the inhibitions of their victims). To compound matters, there is a

& 28. Child pornography thus plays a central role in the sexual abuse of children. It justifies pedophilic conduct and assists pedophiles in seducing children.[13] This Court has recognized that relationship. *Ferber*, 458 U.S. at 759-60.

Enlightened by the forgoing studies and additional testimony, Congress recognized that viewing sexually suggestive pictures of children is related to child sexual abuse and other forms of sexual aggression. *See* S. Rep. No. 537 at 6. In the present case, however, a new form of child pornography, "backdoor child pornography," is before the Court. This new form of child pornography poses the same danger to children as traditional child pornography. *Knox*, 977 F.2d at 821.

II. THE CONTENTS OF THE NATHER TAPES DISPLAY THE GENITALIA OF CHILDREN IN A MANNER CALCULATED TO EXCITE PEDOPHILIC LUST.

An examination of Nather Tapes Two and Three reveals that they were intended to appeal to pedophiles' interest in

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demonstrable link between sexual abuse as a child and criminal behavior as an adult. Burgess, *Abused to Abuser: Antecedents of Socially Deviant Behavior*, 144 Am. J. Psychiatry 1431-36 (Nov. 1987).

[13] *See* Lanning, *supra*, at 18 ("Child pornography exists primarily for the consumption of pedophiles. If there were no pedophiles, there would be little child pornography other than that involving adolescent children."); *see also* W. Marshall, *Use of Sexually Explicit Stimuli by Rapists, Child Molesters and Non-offenders*, 25 J. of Sex Res. 267-288 (1988). The increased occurrence of child sexual abuse has given rise to what researchers refer to as the cycle of child victimization. National Center for Missing and Exploited Children, *Child Pornography and Prostitution* 2-3 (1987)

sexual relations with minors.[14] While this section discusses only a portion of the tapes, it is representative of their contents as a whole.

Nather Tape Two ("Nath. 2") opens with images of a clothed adolescent female striking suggestive poses and responding to off-camera directions. Nath. 2 at 1:00-1:48 (Government's Exhibit 6; R.59, 60). While the female is posing, the camera focuses on her pubic area a number of times. *Id*. Later in Nath. 2, the camera focuses on the panties of a young, early adolescent or pre-teen female. *Id*. at 4:40 & 6:14 & 6:54.

At one point in Nath. 2, an adolescent female says to someone off-camera, "I don't know what to do." Nath. 2 at 8:50. An off-camera voice asks her to push her knees up. *Id*. The female complies and the camera focuses directly on her panties. *Id*. Another off-camera voice then responds, "We love it." *Id*.

Also in Nath. 2, a pre-teen female is depicted in a tree holding a squirming younger female; both are clothed. Nath. 2 at 26:46. The camera focuses on the panties of the older child numerous times. The younger child remarks, "My friend did a video and she got five dollars." *Id*. at 29:35.

Later in Nath. 2, a bikini-clad female hangs upside down and her bikini top falls down exposing her nipple. Nath. 2 at 33:34. The camera quickly focuses in on the exposed nipple. *Id*. The camera focuses on the female's pubic area numerous times. *Id*.

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[14] Because at the time of this writing the government's copy of Nather Tape One was not functioning properly, Nather Tape One will not be discussed. For the convenience of the Court, a more detailed outline of Nather Tapes Two and Three is set forth in Appendix A .

Nather Tape Three ("Nath. 3"), opens with an extended close-up shot of a female's genital area. Nath. 3 at 1:00-3:00 (Government's Exhibit 7; R.59, 60). Later in Nath. 3, a female is instructed by an off-camera voice to "pull your pantyhose down." Nath. 3 at 38:00. The female complies and the camera focuses on her garter as well as her pubic area. *Id.*

III. AN EXAMINATION OF THE "NATHER NOTES" CLEARLY SUPPORTS THE RESPONDENT'S POSITION THAT THE VIDEOTAPES CONTAIN LASCIVIOUS EXHIBITIONS OF THE GENITALIA AND ALSO DEMONSTRATES THAT PEDOPHILES CONSIDER THE NATHER TAPES TO BE LASCIVIOUS.

In the context of obscenity, this Court observed that the manner in which allegedly obscene material is marketed is a relevant factor when determining whether this material appeals to a prurient interest in sex. *See Pinkus v. United States*, 436 U.S. 293, 303 (1978). *Pinkus* recognizes that the trier of fact in an obscenity prosecution must be permitted to consider subjective intent the seller and purchaser. Similarly, it is necessary to consider evidence of subjective intent of the seller and buyer when making a lasciviousness determination in a child pornography prosecution.

In this respect, it is crucial for the Court to understand that the production, distribution, and receipt of child pornography are accomplished by pedophiles. Because each of the persons involved view children as sexual objects, they react much differently to videotapes such as the Nather Tapes than would a non-pedophile. This is significant because non-pedophiles consider only the close-up shots of the genitalia to be the critical issue, while the purchasers of the videotapes find *the entirety* of the tapes to be provocative and sexually stimulating.

By examining the distributor's own words it is possible to grasp the allure the video has for the pedophile:

> **"We do not have any filler material in these videos...Every second is crammed with tender young girls in various revealing outfits."**
> Nather Notes, (February 1990), at Government's Exhibit 4 (R.50, 60).

The distributor also understands that the close-up "crotch shots" distinguish the Nather Tapes from innocuous videotapes that may be taken by proud parents. In a promotional release from the Nather Company for April 1990, the distributor, in several places, says, "We have some nice close-ups of the panties she's wearing under those shorts, too." and, "Then, just as you are recovering from all of the above, we bombard you with some nice teen and pre-teen panty close-ups." and finally, "she is a tease and erotic beyond belief and our famous close-ups are absolutely savage." Nather Notes, (April 1990), at Government's Exhibit 4.

Catering to the wishes of its clientele, Nather produced a tape entitled *Early Adolescence* and promoted it as an "answer to the many requests we had been receiving for tapes that had almost exclusively candid panty shots." Nather Catalogue, p. 3, at Government's Exhibit 4. These quotations demonstrate that there is more to these videotapes than merely images of nice young children. The "more" is what distinguishes the Nather Tapes as a form of child pornography and demands that the Petitioner's conviction be upheld. It is impossible to ignore the blatant sexual overtones and dangerous to assume that covered means non-lascivious.

The distributors found what they perceive to be a loophole in § 2256, "[b]est of all, this tape is completely legal, there is absolutely no sex or nudity anywhere, so it is safe to ship, own and trade." Nather Notes, *Bulletin! New "Young" Video Release, "Sassy Sylphs,"* at Government's Exhibit 4. Note, however, that despite the assurance to the contrary, the videotapes do in fact contain sexually suggestive depictions and partial nudity. For example, the videotape labeled Nather Tape Two contains several seconds of the nude breast of a teenage girl. Similarly, in Nather Tape Three, a young girl is "made-up" to look considerably older than her years and poses in "come hither" postures designed to be seductive.

Further examination demonstrates that the distributors and the purchasers know that the videotapes contain lascivious exhibitions of the genitals or pubic areas. In the Nather Catalogue, a tape entitled "*Lollipops*" is promoted by saying, "scenes of a thirteen year old in a leopard skin bikini with a magnificent ass that she puts on *display* for you as she walks back and forth slowly and teasingly."(emphasis added) Nather Catalogue, p. 2, at Government's Exhibit 4.

Incredibly, Petitioner asserts that if the Nather Tapes are found to contain lascivious exhibitions then, "[p]arents will have to take care when photographing their children playing dress-up where the clothing will surely be *inappropriate* and where the children might strike alluring poses..." Pet. for Cert. at 27. Parents do not, as a regular course of conduct, photograph or videotape the genitals or pubic areas of their children. Even if they did snap such a picture or pass their lens over the genitals they would not linger so as to produce close-ups that are "savage." Any reasonable person viewing the tapes and reading the promotional material must conclude that the videotapes contain lascivious exhibitions.

IV. THE NATHER TAPES INCLUDE LASCIVIOUS EXHIBITIONS OF THE GENITALIA OF MINORS IN VIOLATION OF §§ 2252 AND 2256.

A. The Courts Below Correctly Concluded that Lasciviousness Under §§ 2252 and 2256 Must be Defined in the Context of Pedophilia.

In the court below, the Third Circuit correctly concluded that the clothed genitalia of minors may be exhibited lasciviously in violation of 18 U.S.C. § 2256 even where the genitalia is not clearly visible. *Knox*, 977 F.2d at 821. Amici contend that this construction of § 2256 was correct. *Cf. People v. Walcher*, 515 N.E.2d 319, 323 (Ill. App. 4 Dist. 1987)(upholding a state child pornography conviction where the genitals of minor female were "exhibited or displayed ... *albeit* in a somewhat obscured manner.")(emphasis in original).

To reach its conclusion, the Court below recognized that a lasciviousness determination necessarily requires the Court to inquire into the intended effect of the material at issue. *See Knox*, 977 F.2d at 823 ("Whether a depiction is lascivious is essentially a *subjective inquiry* into whether or not the material is intended to elicit a sexual response from the viewer.")(emphasis added). The approach of the Third Circuit is consistent with precedent. *See Knox*, 977 F.2d at 81-22 (citing to *United States v. Villard*, 885 F.2d 117 (3rd Cir. 1989)); *see also United Sates v. Dost*, 636 F. Supp. 828, 831 (S.D. Cal. 1986)(articulating six-part test), *aff'd sub nom. United States v. Weigand*, 812 F.2d 1239 (9th Cir. 1987), *cert. denied*, 484 U.S. 856 (1987). As the Ninth Circuit noted in *Weigand*, the term lascivious as used in § 2256 should be defined within a "social, cultural, and moral context." *Weigand*, 812 F.2d at 1244. Accordingly, the *Weigand* Court observed that lasciviousness in the context of

§ 2256 is a characteristic "of the exhibition [or the visual depiction] which the photographer sets up for himself or like-minded pedophiles." *Id*; *see also Arvin*, 900 F.2d at 1391 ("motive of photographer" a factor in lasciviousness determination). Amici contend that *Weigand* and *Knox* were correct in this regard and that this Court should consider whether the videotapes in the instant case are lascivious in the eyes of pedophiles, who are clearly the intended audience.

B. The Plain Meaning of § 2256 Does Not Require Nudity for an Exhibition of a Child's Genitalia to be Lascivious.

It is appropriate and correct for this Court to read § 2256 and Webster's Dictionary in conjunction to ascertain the meaning of the phrase lascivious exhibition. *See United States v. Knox*, 977 F.2d 815, 819 (3rd Cir. 1992)(observing that when interpreting a statute, the starting point is always the language of the statute itself and citing *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)). Further, this Court must presume that Congress expressed its legislative intent through the ordinary meaning of the words it chose to use. *See Richards v. United States*, 369 U.S. 1, 9 (1962).

In the present case, Petitioner has been convicted for receiving visual depictions of minors whose genitalia are suggestively displayed. Webster's Dictionary defines lascivious as "tending to excite lustful desires."[15] Furthermore, Webster's Dictionary defines exhibit as "to present or expose to view; show; display."[16] Thus, it is

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[15] Webster's New World Dictionary at 761.

[16] Id., at 476 (3d ed 1991)

logical for this Court to define lascivious exhibition as a "display or showing" that tends to arouse "lustful thoughts."

Moreover, this Court must reject the argument that the phrase "lascivious exhibition" as interpreted by the Third Circuit is unconstitutionally vague. *See* Brief of *Amici Curiae* in Support of Petitioner at 22-23. This argument ignores the obvious. As this Court noted in *Ferber*, the government has "greater leeway" in proscribing sexually suggestive depictions of children because of society's interest in safeguarding their health and well-being. 458 U.S. at 756. Furthermore, the Court in *Ferber* explicitly recognized that this Court has often sustained laws "aimed at protecting the physical and emotional well-being of children *even when the laws have operated in the sensitive area of protected rights.*" 458 U.S. at 757 (emphasis added).

If the government has more freedom to proscribe sexually suggestive visual depictions of children than it has to proscribe obscenity, it follows that the government need not enact laws that are more definite than the present obscenity laws. Moreover, this Court did not impose on the government a requirement of "hyper-specificity" in the context of child pornography. *Ferber*, 458 U.S. at 764 (government must "suitably" define proscribed conduct). Thus, the government must merely define in some fashion the phrase "sexual conduct," of which lascivious exhibitions are a sub-category. The Third Circuit's interpretation of lascivious exhibition is suitably limited because, as was noted below, few "images where a minor's genital area is not fully exposed will constitute a lascivious exhibition." *Knox*, 977 F.2d at 823.

C. The Nather Tapes Contain Lascivious Exhibitions of the Genitalia Because They Satisfy the Test for Lasciviousness Set Forth in *United States v. Dost.*

Briefly, the six-factor *Dost* test, as construed by the Third Circuit panel, asks whether the focal point of the depiction is on the genitalia or pubic area; whether the visual depictions contain children posed in a sexually suggestive manner or located in a place associated with sexual activity; whether considering the age of the child, the child is depicted in an unnatural pose or in inappropriate attire; whether the child is fully clothed, partially clothed, or nude; whether the depiction suggests coyness or a willingness to engage in sexual activity; and whether the depiction is intended to arouse a sexual response. *Knox*, 977 F.2d at 822. According to the Court, no single factor is dispositive. *Id.*, at 823. Thus, total or partial nudity is one of several criteria for determining lasciviousness.

This Court's decision in *Ferber* is also instructive with respect to applying the six *Dost* factors. While articulating the constitutional test for child pornography and distinguishing it from the constitutional test for obscenity, this Court held that sexually explicit visual depictions of children need not be "considered as a whole." *Ferber*, 458 U.S. at 764. Accordingly, a single image intended to engender pedophilic lust is sufficient to establish lasciviousness, notwithstanding a barrage of non-lascivious images contained in the same videocassette. The presence of one depiction in the Nather Tapes which satisfy some or all of the *Dost* factors is therefore sufficient to support a lasciviousness determination. Similarly, the presence of various images, each satisfying an independent *Dost* factor, may be considered together when making a lasciviousness determination. The *Ferber* decision supports the Third Circuit panel's observation that lascivious exhibitions need not contain nudity.

i. The Nather Tapes Graphically Focus on the Genitalia of the Subjects.

As previously discussed and set forth in Appendix A, Nath. 2 and Nath. 3 continually focus on the genitalia of the subjects. Indeed, the entire purpose of both tapes was to provide pedophiles with sexually arousing images of young girls. *See, e.g.*, Nather Notes, (February 1990) at Government's Exhibit 4. There can be little doubt that the Nather Tapes satisfy the first *Dost* factor.

ii. For Pedophiles, the Nather Tapes Display Children in Eroticized Settings.

Because lasciviousness should be examined in the context of pedophilic voyeurs, this Court should view visual images of young girls in playgrounds, schools, and swimming pools as would a pedophile. *See, e.g.*, Nath. 2 at 33:34 (female in playground). Pedophiles associate these settings with children, whom, to pedophiles, are highly eroticized sexual objects.[17] It therefore follows as a matter of course that viewing videocassettes of the genitalia of young girls in these settings permits the pedophile to fantasize about sexual encounters with them.

iii. The Children Depicted in the Nather Tapes Are Unnaturally Posed.

At one point in Nath. 2, a young girl states that she does not know how to pose. Nath. 2 at 8:50. She is instructed to position herself so that the camera can focus on her panties. *Id*. This incident reveals that the subject was too young to comprehend what was happening and her poses should be

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[17] *Cf.* Lanning, *supra*, at 20-21 (documenting interest of pedophiles in objects associated with children).

considered unnatural. Were her poses natural, she would have known how to position herself without instruction.

iv. Many of the Children Depicted in the Nather Tapes are Partially Clothed.

While many of the young girls in Nath. 2 and Nath. 3 are depicted in bathing suits or other forms of "abbreviated attire," none is nude. *See Knox,* 977 F.2d at 817. As the Third Circuit correctly observed, Congress explicitly chose not to require nudity as an element of a violation of § 2252. *Id.*, at 820-21. It is therefore appropriate to consider visual images of scantily clad girls, as in the Nath. 2 and Nath. 3, as evidence of lasciviousness.

v. The Nather Tapes Display Children in a Manner Suggesting Coyness and a Willingness to Engage in Sexual Activities.

At one point in Nath. 2, a child, responding to off-camera directions, pulls a strap down and over her shoulder and gazes at the camera seductively. Nath. 2 at 11:10. The sexual overtones of this image are undeniable. Petitioner cannot credibly contend that this image does not invite pedophiles to fantasize about sexual relations with the child.

vi. The Nather Tapes Are Intended to Elicit Sexual Responses.

Both Nath. 2 and Nath. 3 contain visual images of scantily clad girls in suggestive poses. In view of the fact that these videotapes were pandered to pedophiles, it is clear that they were intended to arouse pedophilic sexual desires. Furthermore, the children are exhibited in an erotic, sexually-charged manner. Indeed, given the tendency of pedophiles to be aroused by non-explicit images of children, the conclusion

that the Nather Tapes were intended to appeal to a pedophilic interest in sex is unavoidable.

V. OVERTURNING PETITIONER'S CONVICTION WILL RESULT IN INCREASED CHILD SEXUAL ABUSE AND CHILD SEXUAL EXPLOITATION.

A. First Amendment Precedent Compels the Court to Conclude that the Government's Interest in Protecting Children from Sexual Victimization Justifies A Prohibition on Depictions of Partially-Clad Children Engaged in Sexual Activity.

Amici submit that the rationale enunciated in *Va. Pharmacy Bd. v. Va. Consumer Council* - that the Court should take into account the interests of society when resolving first amendment controversies - is applicable to the instant case. 425 U.S. 748, 765-66 (1976). In *Va. Pharmacy Bd.*, this Court held that so-called commercial speech warrants protection against government intrusion because of the practical benefits that would accrue to society from extending such protection. *Id.* Specifically, this Court noted that "the free flow of information" is necessary for the furtherance of individual and societal interests. *Id; cf. Lee v. Weisman*, 112 S. Ct. 2649, 2659 (1992) (judiciary has a duty to examine the likely effect of its rulings and to "[r]each past formalism.").

It is incontrovertible that society has an interest in protecting the welfare of America's youth. *Ferber*, 458 U.S. at 757 (interest is evident "beyond the need for elaboration"); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)(interest is "compelling"); *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944)(development of society dependent on "healthy, well-rounded growth of young people"). Furthermore, this Court has held on numerous occasions that

society's interest in protecting children outweighs the first amendment rights of adults when the two are in clear conflict. *See Ferber*, 458 U.S. at 757; *Prince*, 321 U.S. at 164-65; *Ginsberg v. New York*, 390 U.S. 629, 636 (1968); *F.C.C. v. Pacifica Found.*, 438 U.S. 726 (1978)(protection of children justifies proscription on indecent broadcasts notwithstanding the first amendment rights of adult viewers and listeners); *Arvin*, 900 F.2d at 1388 (state has "broad legislative authority" to protect children from abuse). This Court should therefore rule that the safety and well-being of America's children outweigh the right of pedophiles[18] to receive and view depictions of partially-clad children displayed in a sexually suggestive manner.

The consequences of overturning Petitioner's conviction can be identified. Initially, the number of Nather-like videotapes will increase dramatically because there is a strong demand for this type of material in the pedophile community. This increase implies, of course, that a greater number of children will be used as models. Research on the behavior patterns of pedophiles indicates that the sexual abuse of the child models used in "backdoor child pornography" will become more intrusive.[19] Research on the behavior patterns of pedophiles further indicates that easily accessible "backdoor child pornography" will put other children at risk and lead to an increase in all forms of child sexual abuse.[20] Finally, "backdoor child pornography" producers will seek to best one another by marketing videotapes which contain images that are more sexually

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[18] All pedophiles are not child molesters and all child molesters are not pedophiles. A child molester may sexually abuse children due to simple availability, to avoid sexually transmitted diseases, or out of curiosity. On the other hand, pedophiles may not act out their sexual fantasies. Lanning, *supra*, 1-3.

[19] *See*, Erickson, *supra*, at 77.

[20] Id.

explicit. Under the *Va. Pharmacy Bd.* rationale, this Court should reject the Petitioner's argument that pedophiles have a first amendment right to view sexually suggestive depictions of children in light of the harm that such depictions pose to society.

B. Reversing Petitioner's Conviction Will Legitimize the "Backdoor Child Pornography" Market and Permit it to Expand and to Fuel Demand for Sexually Suggestive Depictions of Children.

As indicated by the Nather Notes of March and April 1990, "[t]hese legal videos featuring teen and pre-teen girls have proven so popular that not only have they been widely pirated in this country and abroad, they have also, recently, spurned [sic.] quite a few competitors." Nather Notes, (March 1990, April 1990) at Government's Exhibit 4. If this Court rules that lingering "crotch shots" of little girls are protected expression, a wave of new producers will follow.

It is clear that a huge market exists for pedophilic material.[21] Any relaxation of the protection provided by *Ferber* and *Osborne* will lead to a large and vital market for child pornography that will victimize children. *See* S. Rep. No. 95-438, 95th Cong., 2d Sess. 5. One observer has noted that "[n]o matter how adequate the laws are, how aggressively they may be enforced by police, prosecutors, and the courts...there will always be adults who are anxious to sexually exploit children."[22] By acting responsibly this Court will see, as it did in *Ferber* and *Osborne*, that "it is evident beyond the need for elaboration that a State's interest in safe guarding the physical and psychological well-being of a minor is compelling." *Ferber*, 458 U.S. at 756.

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[21] Shirley O'Brien, *Child Pornography* 301 (1983)

[22] *Id.*

The Petitioner ordered and received the Nather Tapes, thereby sending a message to the distributors to continue producing such videotapes. If this Court fails to affirm the Petitioner's conviction, a flood of similar messages will be sent out by other pedophile consumers. Not only will Nather be free to distribute, but anyone else interested in making money by exploiting children can enter the market. This will put children at greater risk because the producers will undoubtedly approach the outer limits of the ruling. If the Court holds that it is permissible to focus upon the covered genitalia of children the next logical step for the producers is to explore the sufficiency of the covering. How large must it be? How much of the genitalia must be covered? How opaque must the covering be?

C. The Expanded "Backdoor Child Pornography" Market Will Require Additional Child Models and Encourage the Producers of "Backdoor Child Pornography" to Aggressively Recruit Them.

It is logical that an increased demand for Nather-like videotapes, which would be sold openly, requires an increase in models. However, will the purveyors of these videotapes continue to rely on their apparent subterfuge (the staged modeling session) or will they become more brazen when the legality of the material is firmly established? Clearly, if the restraints are removed, and the opportunities for significant financial rewards are abundant, the producers will not hesitate to recruit additional children. Their audience would demand such actions because of the need to increase their private collections.

According to the United States Department of Health and Human Services, about fifty percent of the "runaway population are victims of some sort of commercial sexual

exploitation."[23] It is logical to project that additional children will be lured into a business that, at first, requires no nudity. Unfortunately, those involved in the production of the Nather-like videotapes will expand their activities and some in this expanded group will undoubtedly be involved in other more nefarious segments of the pornography industry.

This proliferation of distributors and producers foreshadows an exponential increase in more intrusive forms of child sexual abuse. Those children that enter the Nather world and reap the benefits will become dependent on the money and gifts involved. When these luxuries are withheld, as they no doubt will be, the children will be asked to perform activities that are increasingly provocative. Each time the line will be extended until some children are forced to participate in more explicit forms of child pornography.[24]

D. The Increased Availability of "Backdoor Child Pornography" and the Increased Sexual Exploitation of Child Models Will Dramatically Increase the Number of Sexual Batteries Committed Against Children.

The end result of a flooded marketplace is a frightening prospect. Much of the relevant scientific research on sexual arousal "suggests that acts of child sexual molestation by some...adults *are precipitated if one achieves orgasm via fantasies of sex with children.*"[25] (emphasis added) The horrifying aspect of this thought is that the Nather videotapes will be used by pedophiles to fantasize, achieve orgasm, and

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[23] Campagna, *supra*, at 147

[24] Stanmeyer, *supra*, at 86; *See*, Campagna, *supra*, at 161 ("When legitimate opportunities do not exist, survival for children who lack the support of their family may depend upon entry into a commercial sex market")

[25] Stanmeyer, *supra*, at 9

then engage in actual child sexual abuse. In *Osborne*, this Court observed that, "[i]t is also surely reasonable for the State to conclude that it will decrease production of child pornography if it penalizes those who possess and view the product, thereby decreasing demand." 495 U.S. at 109-10 (1990).

This reasoning is valid in the instant case. By penalizing the Petitioner for receiving the videotapes, the "backdoor child pornography" market will shrink and fewer children will be subjected to abuse. Similarly, the potential for igniting the sexual abuse of a child through masturbatory fantasies decreases as the availability of the material decreases.

E. As Competition in the "Backdoor Child Pornography" Market Escalates, the Depictions of Children in "Backdoor Child Pornography" Will Become More Graphic.

The Petitioner would also have the Court believe that the Nather Tapes are nothing more than, "[d]epictions of minors in bathing suits, leotards, shorts, underwear, and other similar clothing [and] are created every day and may be found everywhere throughout society." Brief of Pet. at 14. Examining the promotional materials supplied by Nather refutes this proposition and demonstrates that these videotapes are not ordinary "everyday" tapes. Even the Petitioner concedes that "the Nather brochure boasted that the viewer would be sexually aroused by the videotapes." Brief of Pet. at 35. In a *Special Anniversary Notice* for March 1990, the Nather company advertises, "a 15 year old doll with braces and a 40 inch bust and ass to match in a swimsuit two sizes too small and some nice *pubic* peeks." Nather Notes, (March 1990), at Government's Exhibit 4. This advertisement, coupled with a February 1990 *Bulletin* from

Nather which reads, "[o]ne of the girls has a bikini borrowed from an older sister...and when she bends over we all get a startling and rather astonishing look at her full 14 year old bush," demonstrates that the producers and distributors of this material have every intention of reaching or exceeding the outer limits of the law. *See* Nather Notes, (February 1990), at Government's Exhibit 4.

Expecting those, such as Petitioner, who purchase this material to be satisfied simply with viewing extended panty shots is also quite naive. As this Court in *Ferber* recognized the need to protect the children stems from "[t]he legislative judgment...that the use of children as subjects of pornographic materials is harmful to the psychological, emotional, and mental health of the [children]." 458 U.S. at 756. By sanctioning Nather-like videotapes, this Court would subject a significant number of children to sexual exploitation.

One researchers notes that "[c]hildren who pose for pictures begin to think of themselves as objects to be sold, they choke off their feelings of affection and finally respond like objects rather than people."[26] When the subjects of the videotapes in the instant case either discover or face the fact that they have been used the as subjects of pedophilic fantasy, they will think of themselves as objects. Even more horrific is the realization that legalization of these videotapes objectifies the children and makes them likely targets for other forms of pornography. The children in Nather Tapes One, Two and Three are *already* potential participants in more explicit forms of pornography.

It is imperative that the Court understand that "as long as there is a market for child sex there will be men and women

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[26] Stanmeyer, *supra*, at 86

anxious to meet the demand."[27] Any retreat from the solid reasoning of *Ferber* and *Osborne* will produce a long line of people willing to supply pedophiles with "crotch shots" of children. Syndicated columnist Ellen Goodman said it best in a 1977 article for the Los Angeles Times: "This is not a First Amendment issue...It is a matter of protecting the ...lives of young models."[28]

CONCLUSION

From a review of social science studies and relevant judicial opinions, it is clear that child sexual abuse is a term broadly defined. It is equally clear from an examination of the Nather Tapes that they contain depictions of children deliberately posed to appeal to the sexual desires of pedophiles. In short, the producing and viewing of the Nather Tapes constitute a form of child sexual abuse. Additionally, as the research data indicates, the viewing of the Nather Tapes is likely to result in more intrusive, more destructive forms of child sexual abuse such as rape or molestation.

As the *Ferber* Court observed, one of the rationales for proscribing sexually suggestive photographs of children is to facilitate their care and protection, "[which] is a sacred trust and should not be abused by those who seek to profit through a commercial network based upon the exploitation of children." 458 U.S. at 757 (citations omitted). It would surely be inconsistent with *Ferber* to extend first amendment protection to the sexual abuse of children simply because the children are clothed during the course of their abuse.

Likewise, it would be inconsistent with *Ferber* to extend first amendment protection to the visual recordation of such

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[27] Clifford L. Linedecker, *Children in Chains* 297 (1981)

[28] Id., at 256 (citation omitted)

child sexual abuse. The Third Circuit was correct when it noted, "[t]he harm Congress attempted to eradicate by enacting the child pornography laws is present when a photographer unnaturally focuses on a minor child's clothed genital area with the obvious intent to produce an image sexually arousing to pedophiles." *Knox*, 977 F.2d at 822.

Finally, as the Nather Notes reveal, there is a budding market for "backdoor child pornography." It is fair to surmise that potential "backdoor child pornography" producers and distributors are poised to exploit this new market if it were to receive first amendment protection. It would be utterly inconsistent with *Ferber* and *Osborne* for this Court to open the door to commercial viability for any form of child pornography. This Court's decision, whatever it may be, will have an enormous impact on the physical and emotional well-being of children. If Petitioner's conviction is overturned and the "backdoor child pornography" industry becomes commercially viable, it is likely that all forms of child sexual abuse will increase. America can ill afford to place children at greater risk of sexual victimization.

On the other hand, if Petitioner's conviction is upheld and the "backdoor child pornography" industry dies in its infancy, this Court will have struck a tremendous blow in favor of children.

Amici therefore respectfully ask this Court to sustain the ruling of the Third Circuit Court of Appeals and affirm Petitioner's conviction.

Respectfully submitted,

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APPENDICES

APPENDIX A

GENERAL OUTLINE OF NATHER TAPES TWO AND THREE

* The numbers listed below reflect the approximate number of minutes and seconds that have elapsed when a given sequence of events has occurred. This is not a complete transcript or listing of the contents of Nather Tapes Two and Three. There are thus other portions of Nather Tapes Two and Three that the Court may consider instructive. Finally, where this outline indicates that voices can be heard, the Court may need to slow the tape and increase the volume.

Tape Two

Timer Count: (minutes: seconds)	**Description:**
1-1:48	Older looking female in suggestive poses; camera focuses on genitalia and pubic area; female is clothed; obviously intended to elicit sexual responses; female responding to off-camera instructions.
4:40, 6:14, 6:54	Obviously early adolescent female; fully clothed; various panty shots, some of which are extended;
8:50	Obviously adolescent female, darker complexion, in short denim skirt; extended panty shots; female says to someone off-camera "I don't know what to do."; off-camera directions

Timer Count:	Description:
	were then given followed by another panty shot; someone off-camera asks to have the knees pushed up closer to the chest after which camera focuses on panties; off-camera voice: "We love it."
11:10	Young female responds to off-camera instructions and pulls strap down over her shoulder and gazes at camera seductively.
14:50, 18:20	Young children receiving directions from off-camera; camera focuses on pubic area; children in sexual poses inappropriate for age.
26:46, 29:35	Two young children - one very young - in tree; children fully clothed; the smallest child squirms and says, "Let me go."; later smallest child remarks," My friend did a video and she got five dollars."; panty shots of older child; audio then dies.
33:34	Female in bikini bathing suit (i.e., partially clothed); camera focuses on pubic area; intended to elicit sexual response; girl hangs upside down; bathing suit top falls and nipple shows - camera focuses on nipple.
39:35, 40:35	Female poses in bathing suit; responding to off-camera directions;

Timer Count:	Description:
	numerous close-ups shots of pubic area.
Tape Three	
1:00-3:00	Extended close-up shots of genital area;
38:00	Female in dress; camera attempts to focus on pubic area under dress; voice off-camera instructs female "Pull your panty hose down."; female complies and reveals garter.
55:46	Younger child; camera focuses on child's genital area

APPENDIX B

INTEREST AND DESCRIPTION OF THE AMICI

The **National Law Center for Children and Families** ("National Law Center") is a Washington D.C. metro based legal center dedicated to the protection of children and the preservation of families though the enforcement of existing laws and the promulgation of new legislation against illegal pornography and sexual exploitation.

Through the legal staff, resource library, and publications, the National Law Center actively participates in assisting courts, prosecutors, investigators, legislators, public officials, researchers, and parents to stop illegal pornography and its concomitant harms of sexual exploitation of children, women, and families.

Consultation with many county, city and civic leaders around the nation allows the National Law Center to assist in the drafting and enactment of new legislation. This legislation concerns obscenity, child pornography, and materials harmful to minors. The National Law Center is also involved in the dissemination of vital information to legislators, law enforcement, public officials and concerned citizens alike.

Seminars, newsletters and updated prosecutors' manuals are part of the National Law Center's strategy. This strategy is dedicated to equipping law enforcement with the necessary information, pleadings, and legal techniques necessary to win the war for our children and families.

The National Law Center has participated in numerous Amici Curiae briefs before this Court, including *Osborne v. Ohio* and *Alexander v. United States*. Presently, the National Law Center is involved in publishing training materials and

reference manuals on child sexual exploitation and pornography. Its legal staff has conducted legal and law enforcement training for thousands of investigators and prosecutors since 1984.

The National Parent Teacher Association ("PTA") is a section 501 (c) (3) non-profit association and the nation's largest child advocacy organization, comprising over 6.9 million members in the United States, the District of Columbia and Department of Defense Schools in Europe and the Pacific. Founded in 1897, the National PTA has long been involved in assuring the health and protection of children and youth working on such issues as child labor laws, quality children's television, family preservation and juvenile justice. As expressed in a resolution passed on "Obscene and Pornographic Materials," the National PTA supports "legislation and the strengthening of existing laws to preclude the use of children in the creation, production and manufacture of obscene and pornographic material."

The **National Coalition Against Pornography** ("N-CAP") was founded in 1983 by Dr. Jerry R. Kirk to respond to the devastating impact of illegal obscenity and child pornography on America. N-CAP holds that these materials have a direct relationship to the skyrocketing incidence of rape, sexual violence and child molestation in the United States. Numerous respected studies confirm this opinion.

With members representing over 50 religious groups, denominations, citizen action groups and foundations, N-CAP works to increase public awareness of the harm caused by obscenity, indecency and child pornography and to implement a number of programs designed to minimize the threat they pose to our society.

These programs include educational/training seminars designed to teach citizens and law enforcement officials how to rid their communities of illegal obscenity and child pornography. Other programs include: victim service development training; legal and law enforcement training on obscenity and child pornography investigations and prosecutions; extensive resource development and distribution, including a wide range of research reports documenting the harm of obscenity, indecency and child pornography; expert testimony for federal and state legislatures that are considering stronger obscenity and child protection laws. N-CAP founder, Dr. Jerry Kirk, provided testimony before both the U.S. House of Representative and the U.S. Senate in support of the Child Protection and Obscenity Enforcement Act of 1988.

Each of N-CAP's programs is active on national basis, with specific involvement in dozens of local cities at any given time. The fundamental mission and purpose of N-CAP is in protecting children through the elimination of child pornography and obscenity, and the restriction of indecency.

The **"Enough is Enough!"** campaign's mission is to greatly reduce sexual violence and to prevent children, women, men and families from becoming victims by eliminating child pornography and removing hard-core and illegal pornography from the marketplace.

This is an educational program with a plan to mobilize America's women. In the battle against the abusive, predatory material that is flooding our nation. Pornography leaves in its wake broken lives and homes, as its chain of abuse victimizes women and their children.

The "Enough is Enough!" campaign includes women from varied backgrounds, professions, religions, non-profit

organizations and political affiliations. This is a campaign with a focused target (that which is illegal), and a diverse, growing constituency. It is a unique effort in that (moderate, liberal and conservative) women are joining together to deal with hate literature which eroticizes inequality and violence, preys upon children and holds a fatal attraction for many men.

Over 30% of the states' First Ladies and numerous other women of influence have become members of the National Committee of Support, and this list is expanding.

The national launch of the "Enough is Enough!" campaign was held November 1992. Since that date, educational meetings and training seminars have been held in cities from Coast to Coast. This campaign is not creating a new organization rather initiating a movement. Local action is on the increase as women are empowered to bring about change. They are encouraged, educated and provided with materials to equip them to succeed in their efforts. Women are investing their influence to change the way America thinks about pornography.

The **National Center for Missing and Exploited Children** (the "Center") is a non–profit, tax–exempt corporation chartered in the District of Columbia in 1984, with goals of decreasing the incidence of crimes against children, effecting positive changes in public law and policy, encouraging an awareness of the significance of all crimes against children, and assisting families and those who seek to protect children. The Center works in cooperation with the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice in coordinating the efforts of law enforcement, social service agencies, elected officials, judges, prosecutors, educators, and the public and private sectors on child protection issues.

The Center has been funded by the Office of Juvenile Justice and Delinquency Prevention since 1984 to implement tasks under 42 U.S.C. §§5771–5777, including operation of the national toll–free hotline for reports of missing children; operation of the national resource center and clearinghouse for prevention, investigation, prosecution, and treatment of the missing and exploited child case; and assistance to OJJDP in performing its task of coordinating federally funded programs related to missing children. The Center actively assists federal and state law enforcement agencies' efforts to reduce the incidence of sexual exploitation, including passing reports of child pornography received on the hotline to agents of the U.S. Customs Service, U.S. Postal Inspectors Service and local police departments for investigation. The Center provides information on specific federal and state statutes and legislation affecting children, including child pornography laws, state missing children clearinghouse, non–profit organizations, and interested child advocates, and training to professionals.

The **National Children's Advocacy Center** ("NCAC") is a non-profit multidisciplinary prevention, intervention and treatment program. It's primary function is to intervene on behalf of and provide services to child victims of sexual or extreme physical abuse. A significant number of its cases involve exploitation of children by out of home perpetrators.

The Children's Center concept is a result of Madison County Alabama's awareness of the critical need to redesign our investigation and intervention system which was revictimizing abused children. The system was forcing these children and non-offending family members from one agency to another, one professional to another, none of whom had specialized training or knowledge of the special needs of child victims. Abused children were subjected to multiple

investigative interviews, and professionals responsible for intervening on behalf of child victims exercised little or no coordination or teamwork.

NCAC's intervention and clinical program, located in a 9-room Victorian style house in Huntsville, Alabama, opened its doors on May 1, 1985, to provide a place where professionals (NCAC's multidisciplinary team) could meet and work and where children could feel safe and comfortable while receiving the services of a comprehensive clinical program offering individual and group therapy for child victims and their non-offending family members.

Since the NCAC opened its doors, thousands of professionals and hundreds of communities across the nation, and several foreign countries, have requested its assistance in improving their response to child physical and sexual abuse. NCAC has grown from a few speaking engagements annually and a National Symposium with 400 participants, to an organized Training and Technical Assistance Program and a national symposium which attracts over one thousand participants annually.

NCAC also serves as the headquarters for the National Network of Children's Advocacy Centers (incorporated in 1990), to further improve the response of communities to child abuse by facilitating the enhancement of multidisciplinary cooperation and coordination, providing high quality/low cost information referrals, consultation, technical assistance, and training and offering opportunities for networking among communities.

Due to the National Children's Advocacy Centers broad national network, and its reputation throughout the world as a leader in this field, the National Center on Child Abuse and Neglect, of the United States Department of Health and

Human Services, has selected the NCAC to operate the only National Resource Center on Child Sexual Abuse (NRCCSA) and National Training Program on Effective Treatment Approaches (NTPETA). The purpose of NRCCSA is to provide technical assistance to all professionals who work with sexually abused children and their families. The purpose of NTPETA is to conduct training on effective mental health treatment for sexually abused children and their families throughout the country.

The **Child Welfare League of America** ("CWLA") is a federation of more than 700 child welfare agencies in the public and voluntary sectors. CWLA is almost three-quarters of a century old and has long been involved in the development of quality program, practice and policy in the field of child welfare, including child protective services. CWLA standards for quality practice address services to abused and neglected children, including children who have been sexually abused. CWLA standards expressly recognize that child sexual abuse includes the exploitation of children and child pornography. CWLA is committed to strong legal protections to ensure that children are not abused through pornographic exploitation and that children are not placed at heightened risk of sexual abuse and victimization by pedophiles as a result of child pornography.

The **American Coalition for Abuse Awareness** ("ACAA") is an ad hoc coalition of individuals and groups committed to resolving the issue of sexual abuse of children. The ACAA has been founded to seek enactment of federal and state legislation establishing the right of a child to be free from sexual victimization, and appropriate protections to assure that such victimization does not occur; enactment of federal and state legislation extending or eliminating statutes of limitations relating to civil lawsuits brought by adult survivors of childhood sexual abuse; formation of a broad based

Coalition to support such legislation; development of public and media awareness of the issue of sexual abuse of children; establishment of a comprehensive network of legal professionals nationwide dedicated to advancing the legal rights of victims of childhood sexual abuse through the justice system; development of educational outreach programs for members of the judicial and legislative branches of government; establishment of a national body to make policy recommendations on issues related to childhood sexual abuse, protection of children, and adult survivors of abuse. Because child pornography both involves and perpetuates the sexual victimization of children, the ACAA supports the respondent in this proceeding.

Focus on the Family is a Christian, non–profit organization committed to strengthening the emotional, psychological and spiritual health of children and their families in the United States and throughout the world. Amicus President, Dr. James C. Dobson, a renowned child psychologist, served on the Attorney General's Commission on Pornography in 1986.

Amicus has produced two major videos, "A Winnable War" and "Fatal Addiction" and assisted in one book *Pornography: A Human Tragedy* which directly discusses the harms of pornography to children, men, women and families in America. The videos and book have been seen and read by thousands of concerned citizens nationwide. Amicus' daily radio broadcasts dealing with family concerns and interests are heard by more than one million people daily over 1400 stations. Its monthly magazine has a circulation of 1.85 million. Amicus regularly receives letters and telephone calls from and counsels with families who have children devastated by pornography, molestation and abuse.

Focus on the Family works to preserve and protect the family, and thus has particular knowledge about the impact of child pornography that will be helpful to the Court in this case.

The **Family Violence & Sexual Assault Institute** (FVSAI) was established in 1984 by Robert Geffner, Ph.D. The FVSAI became an independent, nonprofit corporation (501[c][3]) in 1991. The first Family Violence bulletin (FVB), now the Family Violence & Sexual Assault Bulletin (FVSAB), was published in 1985. The FVSAI is a national resource center and maintains an international clearinghouse of references and unpublished papers concerning aspects of family violence and sexual abuse, reviews information and materials, and then disseminates the information in the FVSAB, which is published quarterly and distributed internationally. The overall purposes of these two components of the FVSAI is to improve networking among researchers, practitioners, and agencies, and to disseminate information.

In addition, the FVSAI, in cooperation with crisis centers, agencies, and counseling clinics, is involved in developing treatment programs for spouse/partner abuse and sexual abuse. We have also published two treatment manuals and four bibliographies, and are working on others. The focus of our program's research has been on victims and offenders of spouse/partner abuse and of incest.

The final components of the FVSAI involve training and consultation. We conduct seminars and workshops nationwide, as well as educational programs and conferences. We also serve as consultants to various organizations and agencies, providing program evaluation, research, and technical assistance.

Family Research Council, Inc. is a voice for the pro-family movement in Washington, D.C. and provides policy analysis, legislative assistance and research for pro-family organizations. It also seeks to educate legislators on issues which affect American families. Its research, publications and films on the impact of pornography have been distributed to over 400,000 scholars, organizations and citizens.

The issues in this case directly affect the physical, psychological and emotional well being of children, parents and communities throughout the United States. Family Research Council, Inc. works through legislative assistance and public policy to preserve and protect the family and thus has particular knowledge about the harms of child pornography that will be helpful to the Court in this case.

Moving Forward, Inc. is a non profit 501(c)(3) organization that publishes the news journal *Moving Forward* to educate society about the effects of childhood sexual abuse, and to provide support and information to adult survivors of childhood sexual abuse. We have a 19-member Editorial Advisory Board consisting of nationally and internationally known mental health professionals, authors, social science researchers, college professors, and grass-roots organization leaders.

Moving Forward has an international circulation of 3,000. The news journal is read by an estimated 12,000 people. The publication is the only known news journal for survivors, supportive others, and service providers in the United States. It is distributed through self-help support groups, treatment facilities, religious organizations, public libraries, bookstores, conferences, and individual subscriptions. *Moving Forward* is also frequently cited as a resource in the national broadcast and print media.

Moving Forward's readership has been affected both directly and indirectly by child pornography. Some readers have been direct victims of child pornographers, while others have been forced to view pornographic material either before or while they were being sexually exploited. Child pornography victims suffer a type of victimization that leaves them with profound shame and feelings of violation. We believe that the children and adolescents portrayed in the Nather Tapes are victims of sexual abuse--even if the children are partially clothed and have no been physically touched in a sexual manner. We also believe that child pornography encourages sexual offenders to perpetrate child sexual abuse and that it cannot be tolerated.

The **National Center for Redress of Incest and Sexual Abuse** ("Center for Redress") is a foundation established to address the legal needs of adult survivors and child victims of sexual abuse. Located in Washington, D.C., its purpose is to build a comprehensive network of attorneys across the country who are dedicated to furthering the rights of survivors under the law; to develop educational outreach programs, focusing on members of the judicial and legislative branches of government; to facilitate a national grassroots effort to support projects in progress on the issue of sexual abuse and incest; and to litigate test cases under civil law related to childhood sexual victimization. The Center for Redress believes that the connection between childhood sexual abuse and child pornography has been established beyond doubt, and supports the enforcement of laws aimed at preventing the production and distribution of child pornography, such as the law at issue in this case.

Help Us Regain The Children, a national legal research center and lobbying entity, has had the opportunity to query child pornography and child sexual abuse investigators. We have learned of the inextricable tie between pornography and

pedophilia. We are chagrined to have uncovered state and partially federally sponsored child welfare agencies, such as the OHEL CHILDREN'S HOME AND FAMILY SERVICES, to have actively furnished children under their auspices for a well run child pornography/child pedophilia ring, operated by a Rabbi Avrohom Mondrowitz, who fled to the State of Israel immediately after his indictment in 1987. If the social standards were lowered to condone lascivious poses that involve clothed children, we fear that countless children will become enmeshed in this heinous operation, that can possibly and most ironically be supported by our taxpayer dollar if additional child welfare agencies were to follow in the path of the OHEL agency in Brooklyn, New York.

Child pornography is an ever expanding profiteering enterprise which claims numerous victims. The lowering of our social standards by raising the threshold for what constitutes child pornography (viz., nudity) portends a dangerous consequence to our children in our American society. Not only would our children be subject to execrable activities and opprobrious conduct of posing in a prurient fashion, but such detestable behavior has the propensity to lead to or to inhere acts of child sexual abuse.

VOICES In Action, Inc. is an international organization of survivors and supporters of survivors of incest and child sexual abuse that is dedicated, among other things, to the prevention of incest and child sexual abuse in our society. VOICES is a nonprofit organization headquartered in Chicago, and is the largest membership organization of incest and child sexual abuse survivors in the United States. VOICES' members believe that child sexual abuse is not limited to intercourse, but includes other forms of sexual violation, such as voyeurism, pornography or exhibitionism.

VOICES is strongly committed to ending the traffic of child pornography in all its forms. VOICES therefore urges in the strongest possible terms that this Court affirm the conviction in the court below. The "Nather Tapes" and the associated "Nather Notes" clearly constitute a form of child pornography that is itself a form of sexual abuse perpetrated upon the children who appear in the tapes. Worse, the "voice overs" on these tapes and the associated "Nather Notes" clearly indicate that these child "models" are at high risk to be drawn further into the pornography trade and subjected to still other acts of sexual abuse.